

Remarks

The amendments to claims 1, 14, and 31 are for the purpose of clarifying what Applicant regards as the claimed invention. No new matter has been added.

I. **Claim Rejections under 35 U.S.C. § 112.**

Claims 1-30 stand rejected under 35 U.S.C. § 112, first paragraph. According to the Office Action, the limitation “flagging the at least one portion to indicate that the at least one portion is dependent on the target processor if the first optimized form of the software program is optimized to create the second optimized form of the software program” in claim 1 is allegedly not described in the specification.

Applicant respectfully directs the Examiner’s attention to paragraphs 23-24 of the subject application, which describe performing a first optimization 102 to obtain a first optimized form of a software program that is target-independent. Paragraph 24 also describes performing “a next optimization” 106 to obtain a second optimized form that is target specific. Paragraph 25 further describes flagging in a source file “to indicate that it is target-specific”. In view of the foregoing, it is clear that the specification describes flagging to indicate a code is target dependent, which is performed if the first optimized form is further optimized to obtain the second optimized form.

For at least the foregoing reasons, Applicant respectfully requests that the § 112 rejections be withdrawn.

II. **Claim Rejections under 35 U.S.C. § 103.**

Claims 1-3, 8-16, and 21-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication US 2003/0005419 (Pieper) in view of *Portable Software Library Optimization*, 2/1998 (Cain).

A. **Limitations regarding “progressively more dependent” on target processor.**

Claim 1 has been amended to recite “based on results of comparing the first performance profile with the performance objectives, if the performance objectives are not met by the first optimized form of the software program, then optimizing the first optimized form of the software program such that a resulting second optimized form of the software program includes at least one portion that is dependent on the target processor and is coded in the high-level language , wherein

the at least one portion of the second optimized form of the software program is less than an entirety of the second optimized form" (Emphasis Added). Claims 14 and 31 have been amended to recite similar limitations. Pieper and Cain do not disclose or suggest the above limitations.

Rather, Pieper discloses a process 50 in which the source code 52 is optimized in step 58 to obtain a first optimized code 60 that is substantially independent (or "independent" as modified by the Examiner based on Cain) of the architecture of the target processor 12 (see figure 2 and corresponding passage of Pieper). The optimized code 60 is then translated into code 64 "that are specific to the architecture of the target processor 12" (see figure 2, and paragraph 31). Thus, in Pieper, the entirety of code 64 is target dependent. Therefore, Pieper (even with the purported modification based on Cain) clearly does not disclose or suggest a second optimized form of a software program having at least one target dependent portion that *is less than an entirety*, and that is coded in high-level language.

Cain also does not disclose or suggest the above limitations, and therefore fails to make up the deficiencies present in Pieper. Since both Pieper and Cain do not disclose or suggest the above limitations, any purported combination of these references cannot result in the subject matter of claims 1, 14, and 31. For at least the foregoing reasons, claims 1, 14, and 31, and any claims depending therefrom, are believed allowable over the cited references of record.

B. Limitations regarding "flagging".

Claim 1 also recites *flagging* the at least one portion to indicate that the at least one portion is dependent on the target processor *if the first optimized form of the software program is optimized to create the second optimized form of the software program* (Emphasis Added). Claims 14 and 31 recite similar limitations. Applicant agrees with the Examiner that Pieper does not disclose the above limitations. Applicant respectfully notes that there is nothing in Cain that discloses or suggests that any act of flagging is *conditioned upon* whether "the first optimized form of the software program is optimized to create the second optimized form of the software program" as described in the claim (i.e., note the limitation "if" in the claims).

According to page 11 of the Office Action, Cain allegedly discloses "#if-define", which is also described in the subject application. However, Applicant respectfully notes that there is nothing in Cain that discloses or suggests that the "#if-define" is a flag that is conditioned upon whether "the

first optimized form of the software program is optimized to create the second optimized form of the software program,” as described in the claims.

For these additional reasons, claims 1, 14, and 31, and any claims depending therefrom, are believed allowable over the cited references of record.

CONCLUSION

If the Examiner has any questions or comments regarding this response, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **00PA339US03**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **00PA339US03**.

Respectfully submitted,

DATE: February 14, 2011

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